

April 2004

GUIDELINES for USING EPA FORM 5700-33H

Every pesticide enforcement Cooperative Agreement, negotiated between EPA and the State or Tribe, must include a work plan, which includes output projections broken down into eleven inspection categories. The work plan must also specify that participating States and Tribes are to report back to the Agency, semi-annually, on the actual number of inspections conducted by inspection category, and the resulting enforcement actions, also by standard categories [e.g., civil complaint, criminal action, number of warnings]. EPA Regional Offices are responsible for: (1) providing these State/Tribal pesticide inspection projections to OECA with their annual Memorandum of Agreement submission and; (2) inputting into the FIFRA and TSCA Tracking System (FTTS), the inspection projections and the inspection and enforcement action accomplishments for each State or Tribe with a pesticide enforcement Cooperative Agreement. In addition, report WPS inspections and enforcement actions resulting from WPS inspections for each State or Tribe on the revised EPA WPS Form 5700-33H.

EPA Form 5700-33H and EPA WPS Form 5700-33H should be used by States/Tribes participating in the FIFRA Cooperative Agreement program for reporting output projections and accomplishments in the entire enforcement program (including WPS) and WPS enforcement only program. These Accomplishment Reports should be accompanied by a narrative portion as described in these guidelines.

States/Tribes must submit their annual certification and training (C&T) Accomplishment Reports (required under 40 CFR 171.7(d)) through the C&T State Plan Template and Reporting database (please see section “J” of this Appendix for additional information).

To insure uniform reporting, these guidelines and definitions must be followed when completing these forms. Specific guidance is added to fill out the EPA WPS form 5700-33H.

A. Reporting Under the Cooperative Agreement

The Environmental Protection Agency strongly encourages States and Tribes to provide the Agency with summaries of their **total** yearly pesticide inspection and enforcement accomplishments. The Agency believes that such a total summary will provide a much more accurate picture of both an individual State or Tribal inspection and enforcement program, but it will also give a much more realistic national view as well. Total Program Accomplishments includes all activities conducted under the cooperative agreement, including those completed with State/Tribal funds.

B. Output Projections

Output projections must be submitted in the work plan included with the Cooperative Agreement application. These numbers represent the State's/Tribe's annual commitments under the Cooperative Agreement. EPA Form 5700-33H may be used to report projections.

States should negotiate with their Regional office and commit to conducting an agreed-upon number of Federal facility inspections. These would fall under the other categories of inspections listed on the reporting form, but would be conducted at Federal facilities. The number of inspections to be conducted at Federal facilities must be negotiated and included in cooperative agreement applications.

States/Tribes are not asked to make projections for activities to be conducted outside of the Cooperative Agreement program.

C. Accomplishments

In order to evaluate performance under the pesticide enforcement Cooperative Agreement work plan, accomplishments must be reported semi-annually. The accomplishments reported must include inspections conducted, samples collected, and enforcement actions taken. Reports must be submitted to the Regional Office by the State/Tribes within thirty calendar days of the mid-point and end of the Federal fiscal year. Accordingly, reports are due to EPA from States/Tribes by April 30 and October 30 of each year.

The following are uniform reporting requirements for reporting accomplishments:

- C Inspections should be reported only if an appropriate inspection report is completed.
- C The initial reason for the inspection determines the appropriate inspection category for reporting.
- C If more than one type of inspection (of the eleven standard inspection categories) is conducted for the same visit, and each inspection is completely documented, then each inspection can be counted as a separate inspection.
- C State/Tribal enforcement actions resulting from inspections may be reported on Form 5700-33H. This includes enforcement actions for both Federal and State/Tribal violations.
- C Enforcement actions should be reported for the period in which they are **issued**, regardless of when the inspection was conducted.
- C Enforcement actions are to be reported under the inspection category heading for the

initial inspection which led to the enforcement action.

- C Enforcement actions which are not the result of inspections in the field are to be reported in the narrative portion of the report.

See Section E., Inspection Category Definitions, for additional uniform reporting requirements for Use and For Cause inspections.

Also, See Appendix 3b for Guidance for reporting WPS inspections.

D. Inspection Category Definitions

It is understood that many States/Tribes conduct inspections which are not specified as separate inspection categories on Form 5700-33H or defined in these guidelines. The State/Tribe should consult with their Regional Office to determine which inspection categories most closely match such inspections. Inspections which do not fall within one of the eleven standard inspection categories of the form should be reported in the narrative portion of the accomplishments report.

The eleven standard inspection categories listed on EPA Form 5700-33H are defined, for uniform reporting purposes, as follows:

Use Inspections

A Use inspection¹ may be initiated as an observation of an actual pesticide application or as an inspection following an application. This type of inspection is usually selected using a neutral or routine inspection scheme. Use inspections also include the investigation of the many facets of the use of a pesticide including storing, handling, mixing, loading, and disposal. Section 18 and section 24© use inspections will be included in this category for reporting purposes. Uniform reporting requirements are:

- C Use inspections are differentiated from for cause inspections by the initial reason for the inspection.
- C Use inspections are initiated without a reason to believe that a violation has occurred or is occurring.

¹ The term “Use” means any act of handling or release of a pesticide, or exposure of man or the environment to a pesticide through acts, including but not limited to: (1) Application of a pesticide, including mixing and loading and any required supervisory action in or near the area of application; (2) Storage actions for pesticides and pesticide containers; and (3) Disposal actions for pesticides and pesticide containers [40 (#129) CFR 162.3(oo), 1975].

- C Use inspections remain use inspections even if a violation is encountered.
- C A Use inspection requiring multiple visits should be reported as only one use inspection even though many sites may be visited.

For example, in a Use inspection all of the following sites may be visited: application site, adjoining property, dealer where the pesticide was purchased to review sales records, and place of business of certified applicator to review records. The visits to the dealer and applicator should not be reported as separate inspections if these visits were part of the Use inspection.

For WPS agricultural inspections, applicable Compliance Categories and their Elements must be captured by pesticide lead agencies.

1. Agricultural Use Inspections

Agricultural Use inspections include the inspection of pesticide applications in conjunction with the production of agricultural commodities as defined in 40 CFR section 171.2(a)(5) as follows:

The term “agricultural commodity” means any plant, or part thereof, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.

2. Non-agricultural Use Inspections

Non-agricultural Use Inspections include the inspection of non-agricultural pesticide applications.

For Cause Inspections

A For Cause inspection is usually initiated in response to a complaint, damage report, referral, tips, etc. following a pesticide application. Section 18 and 24© followup inspections will be included in this category for reporting purposes. Due to the potential for harm to human and the environment, it is important that the inspector initiate For Cause inspections as soon as possible after the receipt of an alleged misuse.

Uniform reporting requirements are:

- C For Cause inspections are differentiated from Use inspections by the initial reason for the inspection because the inspector may be required to visit a number of sites, interview various persons and/or collect a number of samples.

- C For Cause inspections are initiated when there is reason to believe that a violation has occurred or is occurring.
- C For Cause inspections remain followup inspections even if a violation is not detected.

3. Agricultural For Cause Inspections

Agricultural For Cause inspections are inspections of a suspected misuse of pesticides in conjunction with the production of agricultural commodities as defined in 40 CFR section 171.2(a)(5).

4. Non-agricultural For Cause Inspections

Non-agricultural For Cause inspections are inspections of suspected misuse of pesticides in all categories of non-agricultural applications.

5. Experimental-Use Inspections

An experimental-use inspection may be an actual observation of an application or a For Cause inspection of records to determine compliance with the experimental-use permit. All inspections must be conducted on site; telephone calls or correspondence reviews will not be counted as inspections.

6. Producer Establishment Inspections

A producer establishment inspection (PEI) is an inspection of an establishment where pesticides or devices are produced and held for distribution or sale, for the purpose of inspecting the facility's products and obtaining samples. While conducting PEIs, product labels, containers, and records should be examined for compliance. Inspection of the books and records required by Section 8 are also part of these inspections.

7. Marketplace Inspections

A marketplace inspection is an inspection conducted at the retail, distribution, wholesale, or user level for the purpose of determining product registration status, proper storage and display, any labeling violations, any product decomposition, and for collecting official samples. To be counted as an output, the marketplace inspection must be documented in accordance with the provisions set forth in the EPA Pesticides Inspection Manual.

8. Import Inspections

An import inspection is an actual inspection of a product being imported into the United States to determine whether the product is in compliance with FIFRA. Telephone calls and review of import papers in the inspector's office will not be counted as inspections.

9. Export Inspections

Export inspections are considered to be intensive Section 8 books are records inspections that will involve the review and collection of a large number of documents and several affidavit statements by Regional/State inspector(s) from responsible company officials. Inspection activities will consist of three (3) parts: pre-inspection document collection and review; on-site inspection activities to review and obtain additional documents; and inspection report writing and organization of inspection documents.

An export inspection is an inspection directed toward those pesticides that are intended for export to determine whether they are prepared and packaged in accordance with the specifications and directions of the applicable foreign purchaser and consistent with the EPA Statement of Policy on the Labeling Requirements for Export Pesticides, Devices, and Pesticide Active Ingredients and the Procedures for Exporting Unregistered Pesticides.

10. Certified Applicator License and Records Inspections

This type of inspection is normally conducted at a pesticide applicator's place of business. The purpose of the inspection is to determine if: (1) the applicator is properly certified and/or licensed, (2) the required records are being maintained, (3) the applicator is applying pesticides only in those areas for which certification has been issued, and (4) the records indicate that all applications have been made in compliance with all applicable laws and regulations.

Inspections of non-certified applicators, pest control operators, etc., for the purposes described above should also be reported in this category.

11. Restricted-Use Pesticide Dealer Records Inspections

This type of inspection is conducted on-site at dealers who sell restricted-use pesticides. The purpose of the inspection is to determine if: (1) the dealer is properly licensed or certified (if required) and maintaining the required records, and (2) restricted-use pesticides are being sold only to certified applicators or other properly authorized persons by reviewing the dealer's records.

* Federal Facilities

Inspections at Federal facilities shall be conducted. They would be reported under the applicable inspection category on the reporting form. According to the Office of Management and Budget Circular No, A-106, dated December 31, 1974, and the EPA Federal Facilities Compliance Strategy dated November 1988, Federal facilities are defined as; "building, installations,

structures, land public works equipment, aircraft, vessels, and other vehicles and property, owned by or constructed or manufactured and so leased to, the Federal Government.”

E. Sample Definitions

Physical samples refer to extracted volumes or other substances taken for analysis in determining product formulation, use dilution and residue concentrations.

Documentary samples are samples collected when physical samples of pesticides or devices are not collected. Generally they consist of a complete label, photographs of the pesticide container or the device, and all labeling accurately representing what accompanied the formulation or device in the channels of trade.

Since the number of samples is also used for determining laboratory workload and productivity, documentary or non-physical samples should be differentiated so as not to be reported as sample projections on EPA Form 5700-33H. Documentary samples may be projected in the narrative portion to accompany EPA Form 5700-33H, if a State/Tribe would like to do so. However, as stated above, only physical samples are required to be projected.

F. Sample Accomplishments

With respect to samples collected, both physical and documentary samples shall be reported.

G. Enforcement Action Category Definitions

Only those enforcement actions initiated as a result of an inspection should be reported on EPA Form 5700-33H.

It is understood that many States/Tribes initiate enforcement actions which are not specified as one of the standard categories for enforcement action on EPA Form 5700-33H or defined in these guidelines. The State/Tribe should consult with their Regional Office to determine which reporting categories most closely match such enforcement actions. Enforcement actions not readily falling within one of the ten standard categories on the form should be reported in the enforcement action category **“Other Enforcement Actions”** and described in the narrative portion of the accomplishments report.

The eleven standard categories of enforcement actions listed on EPA Form 5700-33H are defined, for uniform reporting purposes as follows:

1. Civil Complaints Issues

Civil Complaints include any written notice proposing a monetary penalty for a violation. These actions should be reported during the period in which they are issued to the respondent.

2. Criminal Actions Referred

Criminal Actions are those legal actions pursued in a court of law. These actions should be reported during the period in which the case is referred to the judicial system (e.g., State Attorney General, District Attorney, or County Prosecutor).

3. Administrative Hearings Conducted

An Administrative Hearing is when an alleged violator is required to appear before a State, Tribal or Federal hearing officer to explain why the violation occurred. These actions should be reported during the period in which the hearing is conducted.

3. License/Certificate Suspension

4. License/Certificate Revocation

5. License/Certificate Conditioning or Modification

These are usually administrative actions taken to further restrict the use of restricted-use pesticides by certified applicators by suspending, revoking or modifying the terms of the applicator's license or certification.

7. Number of Warnings Issued

To be counted, warnings must be a **written notification** pointing out the violation(s) and placing the recipient on notice that further violation may result in additional enforcement action. Warnings should be reported during the period in which the warning was issued.

8. Stop-Sale, Seizure, Quarantine, or Embargo

All official written orders for removing products in violation from sale or use should be reported in this category.

9. Cases Forwarded to EPA For Action

This includes all inspection files which document violations of FIFRA and are forwarded to EPA for enforcement action.

10. Other Enforcement Actions

Any other written, verifiable enforcement action initiated by the state, tribe, or federal agency that is not comparable to one of the above enforcement action categories.

11. Number of Cases Assessed Fines

This figure indicates the number of enforcement cases resulting in the assessment of a monetary fine (e.g., civil complaint settlements, criminal court actions, or administrative hearing orders).

H. Narrative

Accomplishment Reports should be accompanied by a narrative portion as described below:

1. Inspections Conducted

Inspections which do not fall within one of the eleven standard inspection categories should be reported in the narrative.

2. Enforcement Accomplishments

Enforcement actions not readily falling within one of the standard categories on the form should be reported in the enforcement action category “Other Enforcement Actions” and described in the narrative portion.

Enforcement actions which are not the result of inspections in the field may be reported in the narrative.

Some examples of what would be included under “other enforcement actions” include the following; advisory letters, agreements on remedial action, notices of intent to sue, consent agreements, reports of substandard treatments, treatment correction notices, and stop work order notice.

A “field notice” would be included under the category of “other enforcement actions” (as opposed to the “warning” category) only if it does not meet the definition of a “warning” as described in item #7.

I. Worker Protection Standard (WPS) Agricultural Inspections

WPS agricultural inspections are conducted at agricultural establishments to ensure users of pesticides subject to WPS comply with product-specific Worker Protection requirements as prescribed on pesticide product labeling, such as, personal protective equipment (PPE), restricted

entry intervals (REI), and posted warnings used on the establishment, and generic WPS requirements incorporated by the reference statement that appears on the labeling, such as pesticide safety information, decontamination supplies, safety training, emergency assistance, and worker notification, required to be in place during critical periods of pesticide use (see details in Appendix 3b).

WPS Agricultural Inspections Enforcement Reporting

All State/Tribal WPS inspections are to be reported on the general EPA Form 5700-33H, regardless if these are complete or not. ONLY those WPS inspections which cover all applicable Categories and Elements within the WPS Inspection Guidance, and attempting to interview workers and handlers are to be reported on the EPA WPS Form 5700-33H.

Pesticide Lead Agencies must submit completed EPA WPS Forms 5700-33H biannually to Regions. At the end-of-year (December 31), Regions must submit the completed EPA WPS Form 5700-33H to OECA, Chief Agriculture Branch. All other grant accomplishments will continue to be collected on the standard 5700-33H Form and reported by Regions to OECA through the FIFRA and TSCA Tracking System (FTTS).

EPA WPS Form 5700-33H is divided in two portions: (1) the left side of the Form is divided in four columns to collect total number of WPS inspections conducted in a reporting period; and (2) the right side of the EPA WPS Form 5700-33H is for collecting violations documented during WPS inspections. These two sides of the Form are distinct and unrelated. The aligned rows of each side of the Form are not intended to show relationships in data; the list of violation categories do not relate to the type of enforcement action, and visa versa.

WPS Enforcement Actions (Left Side of WPS Form 5700-33H):

WPS Tier I Inspection column – This is subdivided in two columns, Use and For Cause to collect total number of WPS Agricultural Use and For Cause inspections conducted during the reporting period including the number of inspections conducted at facilities claiming the Immediate Family Exemption.

WPS Tier II Inspection column – This is subdivided in two columns, Use and For Cause to collect total number of WPS Agricultural Use inspections and For Cause inspections, including the number of inspections conducted at facilities claiming Family Exemption.

Total Inspections column – This is to collect the total number of WPS Tier I and Tier II inspections combined, including Facilities using the Immediate Family Exemption. Additionally, totals should be provided for each row, showing a different type of enforcement action taken.

Inspections at Facilities Claiming Family Exemption Column – This is a subset of the WPS Tier I and Tier II combined to collect data on inspections conducted at facilities claiming the Immediate Family Farm Exemption to provide EPA with better data on the size of this component in the regulated community.

WPS Enforcement Actions – Some Enforcement Action Categories are deleted from the EPA Form 5700-33H because they are not applicable to WPS enforcement. Report the total number of enforcement actions taken under the respective inspection heading (Tier I - Use or For cause, Tier II - Use or For cause).

Samples – The number of samples (physical or documentary) need not be counted on the EPA WPS Form 5700-33H, but these data should be included in the general EPA Form 5700-33H.

WPS Detected Violations (Right Side of WPS Form 5700-33H):

Violations during WPS Inspections – This side of the Form is for collecting violations documented during WPS inspections: Ten WPS Violation Categories are listed in the first column. The second column is for reporting the number of violations. EPA expects that the number of WPS violations are going to be greater than the number of enforcement actions on the left side of the Form. The goal of this section is to highlight areas of the Rule where compliance difficulties remain, where compliance assistance activities and enforcement targeting may be focused, and used to monitor national trends. Each State in-turn should use this data to feedback into future compliance efforts and future enforcement targeting.

EPA recommends that all Pesticide Enforcement Agencies provide this information to fulfill our goal.

J. Certification Program Specific Information

Starting in FY 2005, States/Tribes must submit their annual certification and training (C&T) accomplishment reports (required under 40 CFR 171.7(d)) through the C&T State Plan Template and Reporting database system. Use of the C&T State Plan Template and Reporting database will automatically generate an annual C&T report that contains all of the information required by the Office of Pesticide Programs and the C&T regulations. Please refer to Section 2.2.2 of the main guidance, “Pesticide Worker Safety - Program Reporting Requirements” item #7, for more information about the annual C&T accomplishment reporting requirements. [NOTE: Failure to provide the annual C&T accomplishment reporting information may affect future funding levels since this reporting information is used in EPA’s funding formula for determining cooperative agreement funding levels.]